

STATE OF MINNESOTA

IN SUPREME COURT

A19-1656

Court of Appeals

Thissen, J.

State of Minnesota,

Respondent/Cross-Appellant,

vs.

Filed: December 23, 2020
Office of Appellate Courts

Andrew Vernard Glover,

Appellant/Cross-Respondent.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota, for respondent/cross-appellant.

Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota; and

Mary F. Moriarty, Chief Hennepin County Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota, for appellant/cross-respondent.

S Y L A B U S

For purposes of Minn. Stat. § 624.713, subd. 1 (2018), a “firearm” is an instrument designed for attack or defense that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force. Because a distress flare launcher is not such an instrument, it is not a firearm.

Reversed.

OPINION

THISSEN, Justice.

In this case, we are asked to determine whether a distress flare launcher¹ is a “firearm” under Minn. Stat. § 624.713, subd. 1 (2018). Because we conclude that the term “firearm” is limited to weapons, meaning instruments designed for attack or defense, we hold that a distress flare launcher is not a firearm under Minn. Stat. § 624.713, subd. 1. We also hold that the court of appeals erroneously concluded that a distress flare launcher might qualify as a firearm under the statute if used or intended to be used as a weapon. We therefore reverse the decision of the court of appeals.

FACTS

The relevant facts are not in dispute. On July 9, 2019, an employee of a Bloomington department store reported to police an in-progress theft of electronics. When officers arrived, they observed appellant Andrew Glover inside the store and another suspect outside the store. The employee told the officers that the two suspects entered the store, walked into a room marked “Employees Only,” opened a locker, and removed electronics from the locker. It was later determined that Glover and the other suspect had removed a video gaming system, a camera, and a photo printer, totaling approximately \$785.97 in value. The officers discovered a distress flare launcher in Glover’s pocket. Because Glover was previously adjudicated delinquent of a “crime of violence,” he is prohibited from possessing a firearm. *See* Minn. Stat. § 624.713, subd. 1(2).

¹ Although the parties use different terms when referring to the device at issue, we will refer to the device as a “distress flare launcher.”

Glover was charged with aiding and abetting burglary in the third degree, in violation of Minn. Stat. § 609.582, subd. 3 (2018); possession of burglary or theft tools, in violation of Minn. Stat. § 609.59 (2018); and, at issue here, possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2). Glover moved to dismiss this last charge for lack of probable cause, arguing that a distress flare launcher is not a “firearm” as a matter of law. The State countered that the distress flare launcher is a firearm because any “device that expels a projectile by the action or force of an explosion or combustion” meets the definition of a “firearm” under our holding in *State v. Haywood*, 886 N.W.2d 485 (Minn. 2016).

The district court held an evidentiary hearing to determine whether there was sufficient probable cause to support the ineligible person in possession of a firearm charge. The State presented testimony from a firearms expert who testified that a distress flare launcher propels a projectile by use of explosive force. The firearms expert also testified that, according to the manufacturer of the distress flare launcher, such a device has two potential purposes: signaling others for assistance and ensuring that firefighters can ignite wildfires. Following this hearing, the district court granted Glover’s motion.

The State appealed and the court of appeals reversed. *State v. Glover*, 945 N.W.2d 60, 68 (Minn. App. 2020), *rev. granted* (Minn. June 30, 2020). The court of appeals rejected the State’s argument that a “firearm” includes any device that expels a projectile by the action or force of an explosion or combustion, concluding that a “firearm” must be a “weapon.” *Id.* at 66. But the court of appeals also held that a distress flare launcher could be a “firearm” under Minn. Stat. § 624.713, subd. 1, if the factfinder were to conclude that

Glover used or intended to use it as a weapon. *Id.* at 67. Thus, the court of appeals reversed the district court’s order and remanded the case to the district court for factual findings on Glover’s intended use of the distress flare launcher. *Id.* (“[A] fact issue remains concerning whether [Glover] intended to use the [distress] flare launcher as a weapon . . . [which] . . . is a question of fact for resolution at trial.”).

Glover filed a petition for review, challenging the court of appeals’ holding that the distress flare launcher could be a firearm. The State filed a conditional cross-petition for review, challenging the court of appeals’ use-or-intended-use element in its analysis of the term “firearm.” We granted both the petition and cross-petition.

ANALYSIS

We first turn to the question of whether a distress flare launcher is a “firearm” under Minn. Stat. § 624.713, subd. 1. Our inquiry turns on the statutory meaning of the term “firearm.” We review questions of statutory interpretation *de novo*. *Haywood*, 886 N.W.2d at 488.

We “interpret statutory language to ‘ascertain and effectuate’ the Legislature’s intent.” *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quoting Minn. Stat. § 645.16 (2018)). “If the Legislature’s intent is clear from the statute’s plain and unambiguous language, then we interpret the statute according to its plain meaning” *State v. Rick*, 835 N.W.2d 478, 482 (Minn. 2013).

Glover was charged under Minn. Stat. § 624.713, subd. 1, which, in relevant part, provides:

The following persons shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon or . . . any other *firearm*: . . .

(2) . . . a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state[.]

Minn. Stat. § 624.713, subd. 1(2) (emphasis added).

Because the statute does not define the term “firearm,” we may look to other interpretive tools to determine its meaning, including dictionary definitions. *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (stating that “[i]f a statute does not define a word or phrase,” we may “look to the dictionary definitions of th[e] words and apply them in the context of the statute” (citation omitted) (internal quotation marks omitted)).

Merriam-Webster defines “firearm” as a “weapon from which a shot is discharged by gunpowder.” *Merriam-Webster’s Collegiate Dictionary* 471 (11th ed. 2014). *Webster’s* defines “firearm” as a “small arms weapon, as a rifle or pistol, from which a projectile is fired by gunpowder.” *The Random House Dictionary of the English Language* 722 (2d ed. 1987). *The American Heritage Dictionary* defines “firearm” as a “weapon, especially a pistol or rifle, capable of firing a projectile and using an explosive charge as a propellant.” *The American Heritage Dictionary of the English Language* 661 (5th ed. 2011). *Black’s Law Dictionary* defines “firearm” as a “weapon that expels a projectile (such as a bullet or pellets) by the combustion of gunpowder or other explosive.” *Firearm*,

Black's Law Dictionary (9th ed. 2009).² Instructively, these dictionaries define the term “firearm” as a “weapon.”

The State does not offer an alternative dictionary definition to support its claim that a firearm need not be a weapon. Rather, the State contends that we already defined the term “firearm” in *Haywood* as simply any “device” that “expels a projectile by the action or force of an explosion or combustion.” In support of this argument, the State points to one sentence in *Haywood* where we stated, “[T]he plain and ordinary meaning of the word ‘firearm’ includes only devices that require explosive force.” 886 N.W.2d at 490.³ As long as the instrument in question meets this functional definition, the State argues, it is a firearm regardless of whether it is a weapon. Because it is undisputed that Glover’s distress flare launcher uses explosive force, the State continues, it meets the definition of “firearm” as set out in *Haywood*. The State misunderstands our holding in *Haywood*.

The issue before us in *Haywood* was not whether a “firearm” must be a weapon. Rather, the issue before us in *Haywood* was whether a BB gun that used “compressed air,” and not “gunpowder” or some other “explosive force,” was a “firearm” under Minn. Stat. § 609.165, subd. 1 (2014). 886 N.W.2d at 489–90 (stating “[w]e . . . hold that an air-

² In *Haywood*, we consulted dictionary definitions in our discussion. 886 N.W.2d at 490. There, we considered whether the term “firearm,” as used in Minn. Stat. § 609.165, subd. 1(b)(a) (2018), includes BB guns, which do not expel a projectile by the action or force of an explosion or combustion. *Haywood*, 886 N.W.2d at 490.

³ Notably, in the same paragraph, we also stated: “In sum, dictionaries consistently define ‘firearm’ as including only *weapons* that use explosive force.” *Haywood*, 886 N.W.2d at 490 (emphasis added) (listing four dictionary definitions of “firearm” that use the term “weapon”).

powered BB gun is not a firearm”). We did not consider or decide whether a device must be a weapon to be a “firearm.” Today, we conclude that a device must be a weapon to be a “firearm” under Minn. Stat. § 624.713, subd. 1.⁴

We next turn to the question of whether the distress flare launcher is a weapon. A weapon is ordinarily understood to be an instrument designed for attack or defense. *See The American Heritage Dictionary of the English Language* 1961 (5th ed. 2011) (“[An] instrument of attack or defense in combat, as a gun, missile, or sword.”); *see also Merriam-Webster’s Collegiate Dictionary* 1417 (11th ed. 2014) (“[A] means of contending against another[.]”); *Weapon, Black’s Law Dictionary* (9th ed. 2009) (“An instrument used or designed to be used to injure or kill someone.”).

Here, the record establishes that the distress flare launcher is not an instrument designed for attack or defense. The firearms expert testified that, according to the manufacturer, the distress flare launcher has two potential purposes: signaling others for assistance and ensuring that firefighters can ignite wildfires. Moreover, the State concedes that the distress flare launcher here was “designed to be used in emergency situations as [an] alert mechanism[.]” Accordingly, we hold that the distress flare launcher here is not a weapon and, thus, cannot be a firearm under Minn. Stat. § 624.713, subd. 1.⁵

⁴ The State argues that this conclusion impermissibly adds the word “weapon” into the statute. We disagree. We simply construe the unambiguous term “firearm” based on its plain meaning.

⁵ Glover argues that *LaMere v. State*, 278 N.W.2d 552 (Minn. 1979) compels the conclusion that, to be a firearm, a device must be “designed or manufactured as a firearm.” Glover’s argument is incorrect. *LaMere* simply holds that a firearm is still a firearm and,

Our conclusion is also supported by other clues drawn from the statutory text. Words in a statute are best understood in the light of their context. *Bowen*, 921 N.W.2d at 765. Notably, the statute here is a possession statute; not a use or intended use statute. *See* Minn. Stat. § 624.713, subd. 1 (“The following persons shall not be entitled to *possess* . . . any other firearm[.]” (emphasis added)). In such a context, it seems odd for the Legislature to prohibit Minnesotans from even possessing devices—like a distress flare launcher—for which the primary use is safety, rather than to attack or defend. Indeed, under such logic, Minn. Stat. § 624.713, subd. 1, would prohibit an ineligible person from possessing many common items not designed as weapons, such as fireworks.⁶

therefore, a “dangerous weapon,” even if there is “some mechanical defect which renders it temporarily inoperable.” *Id.* at 556. *LaMere* does not directly answer the question before us here.

⁶ Citing *State v. Seifert*, the State urges us to interpret the term “firearm” broadly to include distress flare launchers. 256 N.W.2d 87, 88 (Minn. 1977) (“Having statutory purpose in mind, we think that [the term “firearm” in Minn. Stat. § 609.02 (1974)] should be defined broadly to include guns using newer types of . . . propellants and should not be restricted in meaning guns using [only] gunpowder.”). We decline to do so. In *Seifert*, we interpreted the term “firearm” as used to define a “dangerous weapon” in a different statute, Minn. Stat. § 609.02, subd. 6. 256 N.W.2d at 88. We looked beyond the plain language of the multi-pronged “dangerous weapon” definition to its purpose. Because we decide this case on the plain meaning of the term “firearm” as used in Minn. Stat. § 624.713, subd. 1, we need not resort to a canon of broad construction here. We do not construe the term “firearm” broadly or narrowly; we simply interpret the term. In any event, in *Haywood*, we stated that the language in *Seifert* suggesting that the word “firearm” should be interpreted broadly was dicta. 886 N.W.2d at 490 n.3. Indeed, in *Haywood*, we adopted a more limited meaning of the term “firearm.” *Id.* at 490 (adopting the narrower interpretation that a BB gun is not a firearm rather than the broader interpretation that a BB gun is a firearm).

To summarize, for purposes of the possession offense set forth in Minn. Stat. § 624.713, subd. 1, we hold that a “firearm” is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force.

The State alternatively argues that, even if a device must be a weapon to be a firearm, the distress flare launcher may still be a firearm if the factfinder concludes that Glover’s actual use “weaponized” the distress flare launcher. In other words, the State asserts that it can prove a defendant illegally possessed a firearm under Minn. Stat. § 624.713, subd. 1, in one of two ways: the defendant possessed a weapon *or* the defendant possessed a device that transformed into a weapon by the defendant’s situational use or intended use.⁷ Based on the plain language of Minn. Stat. § 624.713, subd. 1, we reject the State’s argument.

Once again, Minn. Stat. § 624.713, subd. 1, establishes a possession crime, not a crime based on a defendant’s use or intended use. *Id.* (“The following persons shall not be entitled to *possess* . . . any other firearm[.]” (emphasis added)). The Legislature did not use the phrase “use or intend to use” in the statute. Nothing in the plain text of the statute suggests that the Legislature intended a device, which is not a weapon, could be transformed into a weapon by its situational or intended use.

⁷ The State filed a conditional cross-petition for review, arguing that the court of appeals erroneously adopted a “used or intended to be used” element to its interpretation of the term “firearm.” We hold today that a defendant’s use or intended use of a device as a weapon is not relevant to the question of whether an instrument is a “firearm” under section 624.713. Accordingly, our holding resolves the State’s cross-petition as well.

The Legislature knows how to define a device by its use or intended use when it desires to do so. *See, e.g.*, Minn. Stat. § 609.02, subd. 6 (2018) (defining “dangerous weapon” to include “any . . . device or instrumentality that, *in the manner it is used or intended to be used*, is calculated or likely to produce death or great bodily harm” (emphasis added)). Accepting the State’s alternative argument would require us to add the words “or another device that was used or intended to be used as a weapon” to the plain language of Minn. Stat. § 624.713, subd. 1. That we cannot do. *State v. Carufel*, 783 N.W.2d 539, 545 (Minn. 2010) (“[C]ourt[s] cannot add words to a statute not supplied by the legislature.”).

The State’s position—that it is unsafe to allow persons convicted of crimes of violence to carry distress flare launchers around in their pockets—is not unreasonable. Determining what devices persons convicted of crimes of violence should not possess is a matter of public policy, however. Accordingly, it is a question for the Legislature, not this court. *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (stating that questions of public policy are for the Legislature and not the courts).

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.